IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A. No.1839 of 2003

N.A.Jayashankar .. Appellant

-vs-

The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
Chepauk,
Chennai 5. .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.18031 of 1998, dated 25.02.2003. filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records of the respondent in Proc.No.118045/Estt/DPII/A-3/97-19 dated 6.11.98 and quash the same.

For Appellant : Mrs.Thenmozhi Shivaperumal

For Respondent : Mr.Sudharshana Sundar

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 25.02.2003 made in W.P.No.18031 of 1998, in and by which the learned Judge after finding no merit in the claim of the petitioner, dismissed his writ petition.

2. Heard the learned counsel appearing for the appellant as well as the respondent Board.

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3. For convenience we refer the parties as arrayed before the learned Judge.

According to the petitioner, when he was working in the Gudalur Section as Assistant Engineer in the TWAD Board between 1990 and 1993, work had been awarded to a contractor for construction of a retaining wall for Koranchal WSS. After completion of the work by the contractor, the petitioner recorded the measurements which have been checked by his superior officers viz., Assistant Executive Engineer and Executive Engineer in the concerned division. While so, when he was working at Salem Division, he was served with a charge memo dated 03.12.1997 under Regulation 9(b) of TWAD Board Employees (Discipline and Appeal) Regulations 1972. He submitted his explanation to the aforesaid charge memo on 30.01.1998. Thereafter, he received a notice for enquiry dated 23.02.1998 and the enquiry was conducted by the Superintending Engineer, TWAD Board, Coimbatore Circle on 20.03.1998. By communication dated 29.09.1998, he came to know of the letter sent by the Enquiry Officer through the Salem District Collector enclosing original letter of the Enquiry Officer dated 11.09.1998. On receipt of the same, he intimated the respondent that he was not furnished with necessary copies of the enquiry report and the findings of the Enquiry Officer and requested that the same may be furnished in order to submit his defence statement at an early date. It is the grievance of the petitioner that without furnishing a copy of the report of the Enquiry Officer and his findings, by telegram dated 26.10.1998, he was asked to appear for a personal hearing on 02.11.1998 before the respondent. Accordingly, he appeared on 02.11.1998 and reiterated his request for furnishing copies of the enquiry report and the findings of the Enquiry Officer and also prayed for dropping of the charges. On 11.11.1998, he was served with an order passed by the respondent in his proceedings dated 06.11.1998, whereby the respondent has awarded the punishment of dismissal from service. Aggrieved by the said order, the petitioner has filed W.P.No.18031 of 1998.

4. By impugned order dated 25.02.2003, the learned Judge after noting that the petitioner has not established how he was prejudiced due to non furnishing of the enquiry report, dismissed his writ petition, hence the present writ appeal.

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5. The learned counsel appearing for the respondent Board by placing the records submitted that though originally the enquiry report was sent to the Collector of a different person and when it was pointed out, the enquiry report of the writ petitioner was forwarded to the District Collector on 24.08.1998. She also submitted that it is the practice of the Board to communicate only to the District Collector concerned in whose jurisdiction the Officers of the TWAD Board normally work. However, the learned counsel is not in a position to point out whether the enquiry report and the findings of the Enquiry Officer were communicated to the petitioner and the date on which the same was acknowledged by him.

6. Learned counsel for the petitioner has brought to our notice a letter dated 29.10.1998 addressed to the respondent, wherein the petitioner has made a complaint that he was not served with the copies of the report of the Enquiry Officer and his findings thereon. The copy of the said letter is available at page No.18 and the proof that the same was posted to the Managing Director is available at page No.19 of the typed set of papers. In the absence of specific information from the records that the petitioner was served with a copy of the enquiry report and the findings of the Enquiry Officer, and in view of the assertion of the petitioner as seen from the letter dated 29.10.1998, we are of the view that the petitioner was not furnished a copy of the enquiry report and the findings thereon. It is relevant to note that Regulation 9(b) of the Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations 1972 mandates the Board to furnish a copy of the report of the Enquiry Authority before imposing penalty. In view of the specific regulation and in the light of the factual details mentioned above, we are unable to accept the conclusion arrived by the learned Judge. In view of the specific provision, we are satisfied that the petitioner is entitled to a copy of the report of the Enquiry Officer and his findings, in order to enable him to put forth his explanation with regard to the proposed punishment. On this ground, the order of the learned Judge dated 25.02.2003 as well as the order of the respondent dated 06.11.1998 are set aside. The respondent is directed to supply a copy of the enquiry report and the findings thereon to the appellant herein, within a period of two weeks from the date of receipt of a copy of this order. The appellant, namely N.A.Jayashankar, S/o R. Arumugam, residing at No.25 Kamatchi Nagar, Chinna Tirupathi, Salem 8 is permitted to submit his explanation, if any, within a period of eight weeks thereafter. On receipt of the explanation and other materials, the respondent is free to pass fresh orders in accordance with law.

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This writ appeal is allowed on the above terms. No costs.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
Chepauk,
Chennai 5.

+ 1 cc to M/s. Sudarshna Sundar, Advocate, SR No.1728

+ 1 cc to Mrs. Thenmozhi Shivaperumal, Advocate, SR No. 1693

TS(CO)
SR/22.1.2007

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